IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7212 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANSING RAMSWARUP TOMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No.1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Ms.D.R.Kachchhawa, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 5-5-1999 passed by

respondent No.1 - The Commissioner of Police, Ahmedabad City against the detenu - petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at running page No : 17 interalia indicates that a prohibition case vide C.R. No : 5009 of 1999 was registered against the petitioner at Odhav police station on 23-1-1999. That in the said case, the country made liquor was seized from the possession of the petitioner / detenu along with Maruti Franti car. That proceedings of the said matter is pending for investigation. Over and above that, two witnesses on assurance of their anonymity have give statement on 4-5-1999 and 5-5-1999 respectively. The said witnesses have referred to the alleged bootlegging activities of the petitioner and the incidents dated 18-4-99 and 15-4-99 respectively.

That on the basis of the said material, the respondent No.1 - The Commissioner of Police, Ahmedabad City as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his anti social activities activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that on the date of passing of the impugned order, the petitioner was in judicial custody in respect to prohibition case registered against him. However, the detaining authority has failed to consider the less drastic remedy like cancellation of bail or opposing the bail as available under Section 437 (5) of CrPC and thereby, impugned order being without application of mind is bad in law.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the

subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority has observed in penalty mate para that the petitioner was in judicial custody in respect to criminal case registered against the petitioner. However, he has shown the apprehension that on passage of time, the petitioner is likely to apply for bail and having got himself released on bail, is likely to indulge into anti social activities and as such, the detention order is necessary. That the said observation of the detaining authority suggests that there was no consideration of less drastic remedy like opposing the bail and / or if granted claiming cancellation of bail under Section 437 (5) of CrPC.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 5-5-1999 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner - Mansing Ramswarup Tomar is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

#kailash#